



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

December 8, 2000

Mr. David K. Smith
Senior Vice President
Union State Bank
P.O. Box 928
Arkansas City, KS 67005-0928

Re: Request for Opinion No. 2001-003
Broker-Dealer Registration / Bank Referral Services

Synopsis: Broker-dealer and agent registration is not required when a bank and its employees are referring customers to another registered broker-dealer, and the bank employees do not directly or actively solicit customers for brokerage business, and bank employees receive no special compensation for the referrals.

Dear Mr. Smith:

In response to your request for a no action position regarding your business relationship with the FundsXpress Financial Network ("FundsXpress"), our position is described below. Our understanding of the facts is as follows:

FundsXpress is an Internet financial services provider based in Austin, Texas, that offers brokerage services through Choice Investments, Inc. (CRD No. 17665), a Kansas registered broker-dealer. Union State Bank ("USB") will have an agreement to refer its bank customers to FundsXpress and Choice Investments, Inc. ("Choice") for the purpose of providing brokerage services to these customers. FundsXpress/Choice will pay USB \$3.00 for each on-line transaction made by a customer of USB.

The customers will deal exclusively with representatives of Choice, generally through a web site portal. Other than general advertising of banking services and availability of brokerage services, employees of USB will not directly solicit customers for brokerage business. Furthermore, USB employees will not receive special compensation for their referral services.

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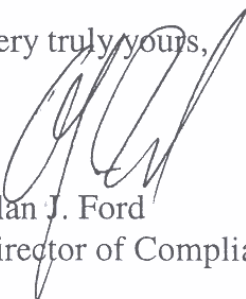
K.S.A. 17-1252(b) defines a broker-dealer as any "person engaged in the business of purchasing, offering for sale or selling securities for the account of others or for such person's own account; but the term does not include an agent, issuer, *bank*, savings institution..." Therefore, USB would not be a "broker-dealer" requiring registration under K.S.A. 17-1254(a).

K.S.A. 17-1252(a) defines an agent as "any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities." Because USB is a company and not an "individual", we must consider whether the employees of USB fall within the definition of an agent, which would require registration under K.S.A. 17-1254(a). We have determined that USB employees would not be considered "agents" because employees of USB will not directly or actively solicit clients in an effort to effect or attempt to effect sales of securities, and will receive no special compensation relating to the transactions of USB customers through FundsXpress/Choice.

Please be advised that this no action position is based upon the representations in your letter and its attachments and is not binding on any court or other tribunal. Any changes in the facts or circumstances surrounding this situation may require a different conclusion.

If you have any questions, please feel free to contact me at (785) 296-3307.

Very truly yours,



Alan J. Ford
Director of Compliance

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